



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## LYNCHING IN INDIA, A MOCKERY OF THE LAW MECHANISM: AN ANALYSIS

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**Abstract:** In the 21<sup>st</sup> century and specially in a democracy; people are of the opinion that everyone should have equal rights and even the law of the land provides for the same. The Indian Constitution which is regarded as the ‘Grundnorm’<sup>2</sup> explicitly recognizes an individual’s right to equality, life and further adding right to profess any religion and protecting it through various enactments affirms the same. However, in recent years and the situation which is prevailing in India and which still persists is otherwise and an individual is forced to think that lynching is the status quo in India. The attributes behind this phenomenon ranges from religious feelings to political will where the law enforcement is proving on its futile to curb such incidents.

**Index Terms:** Indian Constitution, Human Rights, Lynching, Democracy, Basic Structure, Rule of law, Equality, Secularism.

### INTRODUCTION

“Live and let others live” is a beautiful life principle advocated by Jainism. Every life is as precious as any other. Killing displays the height of arrogance and ignorance where the killer believes that he or she can uproot an existence itself. Lynching is not just an extreme form of violence but also, it is a reflection of the crudest form of mentality that tries to supersede what is so natural; *Life*. Paradox is that one of the most powerful animals, the elephant, doesn’t adopt cannibalism as its way of life.

The origin of the word “lynch” is said to have originated during the American Revolution phrased as ‘Lynch Law’ which is a punishment without trial; The word ‘lynch’ or ‘lynch law’ has been derived from two Americans known as Charles Lynch and William Lynch who were from Virginia.<sup>3</sup>

Lynching is defined as ‘killing, by a group of people of someone for an alleged offence without a legal trial or by taking law into their own hands’<sup>4</sup>. It is ‘a term descriptive of the action of unofficial persons, organized bands, or mobs, who seize persons charged with or suspected of crimes, or take them out of the custody of the law, and inflict summary punishment on them without legal trial, and without the warrant or authority of law’<sup>5</sup>. “Lynching is sometimes justified by its supporters as the administration of justice (in a social-moral sense, not in law) without the delays and inefficiencies inherent to the legal system. Victims of lynching have generally been members of groups marginalized

<sup>2</sup> Refer Kelson’s theory of Grundnorm.

<sup>3</sup> MICHAEL QUINON, LYNCH: THE PHENOMENA, Pg. 10, WORLD WIDE WORDS (2<sup>nd</sup> ed. 2008).

<sup>4</sup> OXFORD DICTIONARY OF ENGLISH, OXFORD UNIVERSITY PRESS (18<sup>th</sup> ed. 2010).

<sup>5</sup> BLACK’S LAW DICTIONARY, THOMSON WEST ASPATORE BOOKS (10<sup>th</sup> ed. 2014).

or vilified by society. The practice is age-old; stoning, for example, is believed to have started long before lapidating was adopted as a judicial form of execution.

**In Indian context,** Although not explicitly mentioned Rule of law is the part of basic structure of the constitution and part III of The Indian Constitution provides for Right to Equality and Equal Protection of Laws under Article 14, Freedom of Speech under Article 19 (being negatively used in such incidents), Right to Life and Personal Liberty in Article 21, Right to profess any religion under Article 25 which are all recognized as a fundamental right but the increasing incidents of lynching is encroaching upon the inherent and fundamental right of people to life. Despite progress in recent times towards the working of elimination of lynching, the lack of any such explicit provision in India either in Indian Penal Code, 1860 or any particular enactment related to criminal offences has made lynching is a big threat to each and every individual and also to society at large.

In recent times, what we have seen in India is that almost more than 100 people losing their lives to this phenomenon. As 'right to life' is a well-established fundamental human right which is also protected under International law, various countries and also by the Constitution of India. Life of a human is without any question; is of utmost paramountcy.

The concept of human rights though not new holds an imminent place whenever an individual's or rights of certain groups is talked about. On the other hand, lynching deprives a person's right to live which is a basic human right. In simple words, human rights can be defined as basic freedom and rights to which each and every human being is entitled to whereas lynching is defined as 'killing, by a group of people of someone for an alleged offence without a legal trial or by taking law into their own hands'<sup>6</sup>.

The core of Human Rights has been traced to philosophical reverie, other worldly apprehension and religious disclosures in the state of dharma and lessons of Christianity, idea of din as recognized in Islam, and Taoism and Confucianism of China, etc. It can be certainly recognized that human rights are fundamental rights that are given to a human being by the simple fact that he or she has been born as human being on this earth. The human rights have crossed through a stretch of time and the definition has accordingly been expanded from time to time to bring into its arena certain basic rights which includes right to life.

The act of lynching threatens this very basic human right and the victim of such mob lynching is not even give a chance to present his or her case and just because of the fact that they belong to a particular religious outfit or a community violence is hurled upon them without any reason and cause. In order to protect the human rights of the citizens of the nation and to honour its obligation under the United Nations Charter, India had brought into force the Protection of Civil Rights Act, 1955 for protection human rights of the citizens of the nation.

## BASIC STRUCTURE AND RULE OF LAW

On the issue of communal harmony, the Hon'ble Supreme Court in the matter of **National Human Rights Commission v. State of Gujarat and Others**<sup>7</sup>, the Court held as follows: "*Communal harmony is the guarantee of a democracy. No religion imparts hatred. If in the name of faith, people are killed, that is really a slur and imperfection on the society governed by the rule of law. The Constitution of India, in its Preamble refers to secularism. Religious enthusiasts really do not belong to any religion. They are no better than terrorist who kill innocent people for no rhyme or reason in a society which as noted above is governed by rule of law.*"<sup>8</sup>

The expression 'rule of law' has also been declared as basic structure of the Constitution by the decision rendered in **Keshvananda Bharti v. State of Kerala**<sup>9</sup> Further, the Hon'ble Supreme Court in the matter of **Cardmon Mktg. Corpn. v. State of Kerala**<sup>10</sup> held that: "*When we talk of comprehensive and stable system of administration of justice, all the participants in the said legal system need to be taken care of. The rule of law mirrors a man's sense of order and justice. There can be no government without order, there can be no order without law.*"<sup>11</sup>

<sup>6</sup> OXFORD DICTIONARY OF ENGLISH, OXFORD UNIVERSITY PRESS (18<sup>th</sup> ed. 2010).

<sup>7</sup> National Human Rights Commission v. State of Gujarat and Others (2009) 6 SCC 342.

<sup>8</sup> *Id.*, para 84.

<sup>9</sup> *Supra* note 45.

<sup>10</sup> Cardmon Mktg. Corpn. v. State of Kerala (2017) 5 SCC 255.

<sup>11</sup> *Id.*, para 78.

It is true that administration of justice and safe guarding of laws are in the hands of the Hon'ble Courts across the country, but the courts are bound to render their decision in the four corners of law and the courts cannot deviate from command of the provisions of law. But in the present case of lynching there exists no particular law that can bring an offender to justice thus the Courts do not have any law to base their decision on, thus, the need of the hour is for the legislators to provide the Courts with law to act upon and bring the offenders to justice.

### PERSONAL LIBERTY AND RIGHT TO LIFE UNDER ARTICLE 21

Article 21 of the Constitution<sup>12</sup> uses the expression 'No person' in its provisions, thus, Article 21 of the Constitution of India guarantees right to life to every person irrespective of the fact whether the person is citizen of this nation or not. Article 21 of the Constitution has broadened its scope after the decision rendered by Hon'ble Justice Bhagawati in *Bandhu Mukti Morcha v. Union of India*<sup>13</sup> and now the right to life not only includes right to life of a person in its physical sense of the term but also includes right to live with dignity rather the Hon'ble Supreme Court has gone on to declare that right to life does not include right to die in *Gian Kaur v. State of Punjab*<sup>14</sup>. The Hon'ble Court held: "*Right to life is natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life, and, therefore, incompatible and inconsistent with the concept of right to life.*"<sup>15</sup> The right to life as enshrined in our Constitution under Article 21 guarantees protection of life and personal liberty to all persons and the provisions of the Article itself does not discriminate on the grounds of religion, caste, sex or clothing.

### SECULARISM

The word "secular" is commonly understood in contradistinction to the word "religious". But the meaning of the word "secular State" in its political context can and has assumed different meanings in different countries, depending broadly on historical and social circumstances, the political philosophy and the felt needs of a particular country. In one country, secularism may mean an actively negative attitude to all religions and religious institutions; in another it may mean a strict "wall of separation" between the State and religion and religious institutions. In India, the State is secular in that there is no official religion.

India is not a divinely but a democratic country. However, the Constitution does not intend the involvement of the State in matters related with religion and religious institutions and even indeed with the practice, profession and propagation of religion in its most limited and purified meaning. In the ultimate analysis, the Indian Constitution does not unlike the United States, subscribe to the principle of non-interference of the State in religious organisations but it remains secular in that it strives to respect all religions equally, the equality being understood in its substantive sense; Although the idea of secularism may have been borrowed in the Indian Constitution from the West, it has adopted its own unique brand of secularism based on its particular history and exigencies which are far removed in many ways from secularism as it is defined and followed in European countries, the United States of America and Australia.<sup>16</sup>

India has declared itself a 'secular' State in its Preamble of the Constitution, the 'secularity' is further guaranteed by means of Article 25 of the Constitution<sup>17</sup> which protects the citizen's fundamental right to freedom of conscience and his right freely to profess, practise and propagate religion. During the Constitutional Assembly Debates, Nehru had declared that secularism was an idea which is to be achieved and that establishment of a Secular State was an act of faith.

<sup>12</sup> Article 21- Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>13</sup> *Bandhu Mukti Morcha v. Union of India* AIR 1984 SC 802.

<sup>14</sup> *Gian Kaur v. State of Punjab* AIR 1996 SC 946.

<sup>15</sup> *Id.*, para 22.

<sup>16</sup> *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

<sup>17</sup> Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jains or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

This in brief was the notion of secularism and democracy during the pre-independence era and immediately before we gave ourselves the Constitution. The term 'secular' has advisedly not been defined because it is a very elastic term not capable of a precise definition and perhaps has been best left undefined.

To understand secularism, the 50 years of the working of the Indian Constitution needs to be taken into consideration. The complete neutral treatment to religion and apathy for all religious teachings in State institutions has not helped in removing the intolerance and misunderstanding between different sections and people belonging to religious practices, beliefs and faith. Therefore, secularism is susceptible to a meaning which is positive and which develops mutual understanding between these different religious sections of people. The essence of secularism is non-discrimination of people by the State on the basis of religious differences.<sup>18</sup>

### SECULARISM AND SECULARISATION – THE DIFFERENCE

There is a difference between secularism and secularisation. Secularisation is a process to restructure the institution by decline in belief, religious activity, the way of thinking. Secularism on the other hand is more of a political ideology and cannot be accepted as some criteria on the basis of which state deals with the citizen, The Indian Constitution seeks to blend religious practice, religion, religious practice, and matters of religion under secularism, it also forms the basic structure of the constitution. To secularize the matter of religion which are not essentially and initially part and parcel of any religion on the basis of superstition turns futile the very essence of secularism. In other words, such practices are antithesis to secularism which initially was used to seek contribution to some extent to the matters of religion and secularisation.<sup>19</sup>

In October 1939, in reply to the claims that India is not a secular and unified country but for Muslims there has to be a separate country, Gandhi had said: "How is India not one nation? What about the moghul period? Were india two from the beginning? Whether Parsis and Christians also need to make a third and fourth country respectively? What about the places where hindus are handful and muslims are in majority and vice versa? The way suggested by people is nothing but a strife."

As to the nature of Indian secularism and the role of the State in matters of religion I am of the view that in India, secularism can only be viewed in a broad way that has in it a place for every community and group but at same time it is vague and curbed in many ways one of which is lynching. Indian secularism, like a local body in India has to be essentially pluralistic and flexible. In India secularism cannot be used as a tool to get away with the differences of creed, caste, religion and language and for developing a more uniform and amalgamated society pressurizing on the vague concept of "Indianness".<sup>20</sup>

The Constitution has accepted one common citizenship for every Indian regardless of his religion, language, culture or faith. The only qualification for citizenship is a person's birth in India. We have to develop such enlightened citizenship where each citizen of whatever religion or language is more concerned about his duties and responsibilities to protect rights of the other group than asserting his own rights; the constitutional goal is to develop citizenship in which everyone enjoys full fundamental freedoms of religion, faith and worship and no one is apprehensive of encroachment of his rights by others in minority or majority.<sup>21</sup>

In the background of secularity, it can be easily concluded that lynching violets not only the secular character of the law if land but also violets the rule of law. Both secular character and rule of law are the basic structure of the Constitution and cannot be abridged by any legislation. Thus, when the basic structure of the Constitution is to be kept at such high regards that not even the law makers are allowed to abridge the basic structure, the act of lynching in contrast violates the basic structure at the very outset.

### SECTION 302 OF INDIAN PENAL CODE<sup>22</sup>

<sup>18</sup> Aruna Roy v. Union of India, (2002) 7 SCC 368.

<sup>19</sup> A.S. Narayana Deekshitulu v. State of A.P., (1996) 9 SCC 548.

<sup>20</sup> Justice Aftab Alam, The Idea of Secularism and the Supreme Court of India, (2009) 10 SCC J-60.

<sup>21</sup> *Id.*

<sup>22</sup> Section 302 Punishment for murder—Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

This area of IPC punishes crime identified with homicide for example the individual who is convicted of murder is punished either with a punishment of death or life imprisonment. As to the present issue section 302 of IPC puts a strict burden of proof on the prosecution to establish homicide beyond reasonable doubt, in case of lynching the burden of proof should depend on the meeting of above mentioned three criteria's by NCAAP on lynching such as if –

**Firstly**, there is evidence that person was killed.

**Secondly**, the person must have met death illegally meaning thereby that person was killed based on communal grounds such as on the pretext of individual eating red meat and belonging to a particular religious group.

**Thirdly**, a group of three or more persons must have participated in the killings, the three of them can be charged under these provisions both individually and as a group

**Lastly**, the killing is carried out in public<sup>23</sup>

But there cannot be a straight jacket formula for every case coming before the Hon'ble Courts, it is for the Hon'ble Courts to decide and serve justice as the matter demands.

### SECTION 304 OF THE INDIAN PENAL CODE<sup>24</sup>

The provisions of this section provides punishment for culpable homicide not amounting to murder. The punishments provided under the provisions of this section are as follows:

- Life imprisonment
- Imprisonment for a term which may extend to ten years, and fine in case where the act was done with an intention to kill or cause an injury which might cause death.
- Imprisonment for a term which may stretch out to ten years, or with fine, or with both, if the act is done with the knowledge that it is probably going to cause death or the injury that is probably going to cause death, intention is not an essential criterion, knowledge is enough to fix guilt.

The section last clause of the section clearly provides that intention is not an essential to establish offence under this section mere knowledge of the act is enough to get the offender convicted under this section.

### SECTION 307 OF THE INDIAN PENAL CODE<sup>25</sup>

The provisions of this section provide for punishment if there should be an attempt to murder. An individual who an act with either the intention or knowledge that his act may cause death would be liable of homicide and is to be punished with punishment of either for a term of as long as ten years and fine.

The provisions of the section are useful in cases where the victim is spared death by the accused; the offender can still be brought to justice for the offence of attempt to murder and can be charged both individually and as a group. The prosecution has fewer burdens of proof in these cases and it for the Courts to decide whether it is murder or attempt to murder depending on the circumstances presented before the Courts.

<sup>23</sup> *Supra* note 44.

<sup>24</sup> Section 304 Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

<sup>25</sup> Section 307-Attempt to murder. —Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life convicts. —When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

**SECTION 323 OF THE INDIAN PENAL CODE<sup>26</sup>**

The provisions of this section provide for the punishment for voluntarily causing hurt. Whoever intentionally causes hurt, except, under provocation as defined under section 334 of the Indian Penal Code<sup>27</sup>, will be punished with imprisonment which may extend to one year, or with fine up to one thousand rupees, or in certain cases both.

The provisions of this section expands the horizon of crime meaning thereby that lynching may not always result in death of victims and it may only be for hurting the person physically such physical abuse has been covered by the provisions of this section and should be used accordingly by the Hon'ble Courts across in the country.

**SECTION 325 OF THE INDIAN PENAL CODE<sup>28</sup>**

The provisions of this section provides for punishment for causing intolerable hurt intentionally. Under the provisions of this section, if an individual causes wilful grievous hurt, except under provocation under section 335<sup>29</sup> shall be punished with imprisonment of either for a term of as long as seven years and fine.

The provisions for a deeper gravity of hurt in its provisions thus it for the Courts to decide whether provisions of section 323 or this section should be applied to a particular case. The punishments enumerated by the author above will only be applicable for a group of people as accused. The provisions of the above-mentioned sections have to be read with provisions of the section provided below:

**Section 34 of the Indian Penal Code<sup>30</sup>**

The provisions of this section defines the expression 'common intention'. At the point when a criminal act is committed by a group of people in facilitation of a common intention, every single person can be convicted as if the individual had done the criminal act individually. In the event of lynching, each person involved in lynching act with a common intention to either hurt or cause death of the victim, each of the lynchers can be individually punished as if the lynching had been done by them alone.

**Section 141 of Indian Penal Code<sup>31</sup>**

The provisions of this section provides punishment for unlawful assembly. An assembly of at least five people is termed as an "unlawful get together". If the assembly commits an act of hurt or murder can be prosecuted as unlawful assembly according to the provisions of this section.

<sup>26</sup> Section 323 Punishment for voluntarily causing hurt. —Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

<sup>27</sup> Section 334 Voluntarily causing hurt on provocation. —Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

<sup>28</sup> Section 325 Punishment for voluntarily causing grievous hurt. —Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>29</sup> Voluntarily causing grievous hurt on provocation. —Whoever 1[voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both. Explanation.—The last two sections are subject to the same provisos as Explanation 1, section 300.

<sup>30</sup> Section 34 Acts done by several persons in furtherance of common intention. —When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

<sup>31</sup> Unlawful assembly. —An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

(First) — To overawe by criminal force, or show of criminal force, 1[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

(Second) — To resist the execution of any law, or of any legal process; or

(Third) — To commit any mischief or criminal trespass, or other offence; or

(Fourth) — By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(Fifth) — By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. Explanation. —An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

### Section 149 of Indian Penal Code

Every individual from unlawful assembly would be guilty of the offense committed with a common object- If an offense is committed by any individual from an unlawful assembly in pursuance of a common object of that assembly, or, for example, the individuals from that assembly knew to probably be pursuing that common object, each individual who, at the time was member of such unlawful assembly, is guilty for the offence committed by the unlawful assembly.

In the event that there is lynching of a victim because of the reason he belongs to a particular religion the lynchers will be booked under the provisions of this section and every member part of the lynching group would be guilty.

### Section 147<sup>32</sup> and 148<sup>33</sup> of Indian Penal Code

The provisions of these sections provide definition and punishment for rioting. The provisions provide that whoever is guilty of rioting, having possession of a deadly weapon or with anything which, utilized as a weapon of offense, is probably going to cause death, will be punished with imprisonment which may extend to three years, or with fine, or with both.

### Section 120B of Indian Penal Code<sup>34</sup>

Criminal conspiracy- If a group of individuals conspire to carry out an offense punishable with death or imprisonment will be booked under the provisions of this section.

### Section 223 of the Code of Criminal Procedure, 1973<sup>35</sup>

The section contains provision for cases where group of people being charged for an offense mutually when they are accused for a similar offense in the same transaction which is applicable on at least two or more individuals.

Lynching related assaults for the most part incorporate assaults by vigilantes, murder and endeavour to kill, badgering, attack, assault and so on. The exploited people are frequently ruthlessly beaten, binded, stripped and hanged causing unfortunate wounds or death.

## LYNCHING INCIDENTS

<sup>32</sup> Section 147 Punishment for rioting. —whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

<sup>33</sup> Section 148 Rioting, armed with deadly weapon. —Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

<sup>34</sup> Section 120B. Punishment of criminal conspiracy. —

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

<sup>35</sup> Section 223 of CrPC- What persons may be charged jointly. The following persons may be charged and tried together, namely: -

- (a) persons accused of the same offence committed in the course same transaction;
- (b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
- (c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last- named offence;
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those sections in respect of stolen property the possession of which has been transferred by one offence;
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges: Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

People tend to punish the violator on their own assumption and in the manner, they deem it to be fit. Apart from it being in clear violation of laws, it is not acceptable even on moral basis. Every individual has a right to live with dignity and further to be treated with humaneness that the law provides. No community or a group of people have any right to adjudge other. Every accused is to be protected until proven guilty by law.

The manner of media coverage of these incidents can also help in combating this horrible crime. Our media focuses inordinately on the victim's act that prompted lynching. The use of terms like 'gau rakshaks' for the perpetrators and 'cow smugglers' for the victims provide a veil of justification; Consultant neuropsychiatrist Dr. Era Dutta says that lynch mobs generally believe that they are dispensing justice through their violent acts. "They think of it as act of God as if God's will be being carried out through lynching."<sup>36</sup>

Lynching in India include that of those accused of petty crimes, individuals accused of murder and rape, also the individuals perceived by mob as deviants. Apart from these, about 2097 lynching deaths have been a result of witch hunts, barbaric caste system in the country is another prominent reason behind lynching. The number of incidents of lynching in India has been on a rise. Accompanying this overall rise is the rise of mob lynching, particularly by cow vigilantes. At the epicentre of upheaval in the country is the animal cow. While it is sacred and mother like for the majority Hindus; cow butchering is the source of income for the minority Muslims. Cow vigilante groups have always been very firm to protect cows. Following the Government's ban on cow slaughtering, these so called gau rakshaks have been ruthlessly killing those suspected of killing, trading, or consuming beef.

Dadri lynching of 2015 invited a huge media attention. "On 28.09.2015, the 52-year-old ironsmith was dragged from his house in the village of Bishahra, in the district of Dadri in Uttar Pradesh, after a local Hindu temple announced that a cow, considered sacred by many Hindus, had been slaughtered by him. He was beaten to death and his son was severely wounded."<sup>37</sup>

While communal hatred has always been the cause of lynching in India, what has been added to the list more recently is accusations of child lifting.

Law has to be interpreted in terms of life, not the life of yesterday, but the life of today. Our own English body of law is, on the whole, "sufficiently elastic largely to meet this requirement. Not without right did a wise man speak of 'the spirit of law', for the body of law is not a dead body. It is something into which man has breathed the spirit of life. It is curious from what is perhaps the greatest creation of all, the balanced and interacting principles which society applies to its own conservation and ordered progress."<sup>38</sup>

In the administration of justice, the public opinion of the day is not lightly to be flouted. If the feeling be strong and its ignoring open and provocative, satisfaction will be sought outside the law. The tenderness of the judge, whether sentimental or corrupt, to those guilty of offences held unpardonable by their fellows, will almost certainly lead to lynchings, and once trial and execution fall into the hands of the mob law is in a bad way. The mob may be right and the judge wrong, but the evil done is incalculable.

To sum up vigilantism i.e. spontaneous response to a particular phenomenon which can be for a good or bad cause is fundamentally dangerous to our society, it brings disrepute to our nation on the international plane. Its roots in India can be found in communalism, which over a period of time have crept in the Indian social fabric. There is in place, fascist tendencies will get encouraged and may take control of the State.

## SUGGESTIONS

A separate law should be put in force quite soon. This is for a simple reason that amendments are very much possible depending on the situation. Laws evolve over a period of time. It is definitely not a case that once a law is put in place it will remain static forever. Laws in fact are quite dynamic.

The Government can always use things like Notifications, Circulars and other means to tackle special situations, if any. Learning from the US experience India should keep in mind that discussion, debates, deliberations etc. can continue just not for years but for centuries together.

<sup>36</sup> Dr. Shilpa Jain and Nikita Aggarwal, Mob Lynching: A Dent in Majesty of Law (2018) PL (HR) September 86.

<sup>38</sup> Vigilantism, Culpability and Moral Dilemmas, Nandini Sundar, *Critique of Anthropology*, Vol. 30(1), 113-121, 2010.

Those who are fighting for the enactment of the law should highlight this fact. It is for the public to pressurize the Government to the maximum extent possible. Success is not guaranteed as was seen from the Anna Hazare led India against Corruption movement that demanded enactment of a strong Lokpal bill. Yet, such movements have their own value. A strong civil movement in the case of anti-lynching is suggested.

That the political and religious element to the issue is absurd and illogical also needs to be strongly put up. Though Article 48 of the Indian Constitution provides for protection of cows and calves there are certain exceptions for the consumption of beef. Communal hate shouldn't be supported only because Hindus consider cow as a sacred animal, Christians and Muslims can't be targeted for beef consumption as lynching in the name of cow-killing; it's one of the most illogical stand. Not to suggest that cow-killing should be promoted; rather it is being suggested that this particular illogical stand by the Hindus has to be strongly refuted.

There are some apprehensions about the separate law as well. It can be misused, it may remain on paper and it may not be adequate to typical problems in India are some of the doubts have been expressed. However, the number of people who have expressed these doubts are very few as compared to those who have been quite vocal about an immediate need for a separate law. And in any case, enforcement of the law is a different issue. A law not being there at all and it being poorly implemented cannot be mixed up. Today, India is at the first stage where the law itself is missing. This has to be addressed quickly and strongly.

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